

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 87336-001

v

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
This 28th day of February 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On January 23, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on January 30, 2008.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on February 8, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM Dental Options Group Benefit Certificate (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

On June 6, 2007, the Petitioner received orthodontic treatment from XXXXX, DDS. The charge for this care was \$2,000.00. BCBSM denied coverage, saying the Petitioner was not eligible for orthodontic services at the time they were rendered.

The Petitioner appealed BCBSM's failure to pay. BCBSM held a managerial-level conference on November 28, 2007, and issued a final adverse determination dated November 29, 2007.

III ISSUE

Is BCBSM required to pay for the Petitioner's orthodontic care?

IV ANALYSIS

Petitioner's Argument

The Petitioner receives health care benefits through her mother's employment with the City of XXXXX. Before the Petitioner received these services, her mother said she had the XXXXX human resources department confirm that orthodontic care was covered. According to the Petitioner's mother, XXXXX (human resources assistant for the city) called BCBSM and talked to a Mrs. Wilson who confirmed that the Petitioner was covered for orthodontic care. Based on that confirmation, the Petitioner went ahead with her orthodontic care.

The Petitioner believes that her orthodontic care is covered because the certificate says that dependent children are allowed to remain on their parents' coverage through the end of the calendar year in which they turn 19 years of age. The Petitioner turned 19 years old on January 21, 2007, and argues that she was therefore covered until the end of 2007 which included the time the services were performed (June 2007).

The Petitioner believes BCBSM is required to pay for her orthodontic care.

BCBSM's Argument

BCBSM says that the certificate sets forth which benefits are covered. On page 3.12, under “Class IV, Orthodontic Services,” the certificate has this caveat:

We pay our approved amount for the [orthodontic] services listed below when performed by a dentist to detect, prevent and treat malocclusions of the teeth and related deformities and impairments for members under the age of 19. [Underlining added]

On Page 3.13 the certificate goes on to indicate.

We do not pay for:

- Orthodontic services for a member over age 19 **unless** a Schedule of Benefits changes the age limit

The Petitioner’s birthday is January 21, 1988; she turned 19 years old on January 21, 2007.

In order to be eligible for coverage, her orthodontic services should have been provided before January 21, 2007. BCBSM points out the services were provided on June 6, 2007, several months after her 19th birthday. In addition, BCBSM says there is no change in the Petitioner’s schedule of benefits that would extend the age limit for orthodontic care under the terms of the Petitioner’s coverage.

BCBSM also says it could find no record of any conversation with the human resources department of XXXXX regarding the Petitioner’s orthodontic benefits and therefore does not believe that it misled the Petitioner about her orthodontic coverage.

The Petitioner argued that she should have coverage through 2007, the year she turned nineteen. BCBSM says that while the certificate allows a dependent child to remain on a parent’s coverage through the end of the calendar year in which they turn 19 years of age, that general provision is specifically modified for orthodontic benefits.

BCBSM believes that the Petitioner’s orthodontic claim was denied appropriately.

Commissioner’s Review

The certificate describes how benefits are paid. It explains that orthodontic care is not a covered benefit unless the member is under the age of 19. The Petitioner was already 19 years old

on June 6, 2007, when she received her orthodontic care. Therefore, under the terms of the certificate, her orthodontic care is not a covered benefit.

The certificate does permit dependent children to remain on a parent's coverage through the end of the calendar year in which they turn 19 years of age. However, that language of general applicability is further amended by the certificate's specific limitations or exclusions, which in this case limit orthodontia to members under 19 years of age.

The Petitioner contends that BCBSM misinformed her about her orthodontic coverage and she acted in reliance on that misinformation. BCBSM disputes the Petitioner's contention and does not believe it misinformed her. However, the Commissioner cannot resolve this kind of dispute because the Patient's Right to Independent Review Act (PRIRA) process lacks the hearing procedures necessary to make findings of fact based on alleged oral representations. Moreover, the Commissioner lacks the authority to order relief based on such doctrines as detrimental reliance or estoppel. Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms and conditions of the applicable insurance contract and state law.

The Commissioner finds that BCBSM has correctly applied the provisions of the Petitioner's certificate when it determined the Petitioner's June 6, 2007, orthodontic care is not a covered benefit under language of the certificate.

V ORDER

BCBSM's final adverse determination of November 29, 2007, is upheld. BCBSM is not required to pay for the Petitioner's June 6, 2007, orthodontic care since it was provided after she turned 19 years of age.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham

County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.